

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 15 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90023

IN THE MATTER OF A COMPLAINT FILED BY:

IN RE: The Complaint of _____ against United States District
Judge _____ of the United States District Court for the
_____ District of _____, under the Judicial Conduct and
Disability Act of 1980, 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against
United States District Judge _____ (“the Subject Judge”), un-
der the Act, 28 U.S.C. § 351(a), and the Rules for Judicial-Conduct
and Judicial-Disability Proceedings of the Judicial Conference of
the United States (“Judicial-Conduct Rules”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. *See* 11th Cir. JCDR 6.7.

Background

The record shows that in February 2021 Complainant filed in state court a pro se lawsuit against a bank, raising 12 claims for relief. In the complaint, Complainant noted he had a checking account with the defendant and he discussed certain loans he received from the defendant. The next month, the defendant removed the case to federal court and filed a motion to dismiss the complaint. Following an unsuccessful mediation, in October 2021 the defendant filed a motion to stay the case and to compel arbitration. In November 2021 Complainant filed, among other things, a motion for leave to amend his complaint and to compel discovery and a motion for sanctions against opposing counsel. In the motion for sanctions, Complainant alleged the defendant and the defendant's counsel committed fraud and concealed certain discovery from him. A magistrate judge denied the defendant's and Complainant's motions without prejudice for failure to comply with a local rule.

The defendant then filed a renewed motion to stay the case and to compel arbitration, contending in part that (1) Complainant had a deposit account with the defendant that was governed by a depository agreement; (2) in 2016 Complainant signed a signature card associated with the deposit account that acknowledged receipt of the depository agreement and agreement to all its terms; and (3)

the depository agreement contained an arbitration clause providing that either party could require claims to be arbitrated in certain circumstances. In January 2022 Complainant filed a response in opposition to the defendant's renewed motion to stay and to compel arbitration. Complainant argued in part that (1) the depository agreement did not cover "loans, violations of lending practices, or predatory lending and fraud"; (2) his accounts were opened in 2017, before the depository agreement became effective in 2020; and (3) he never received a copy of the depository agreement and never signed a document stating it was received.

Later that month, the Subject Judge issued an order directing the defendant to supplement its filing to clarify the terms of the depository agreement in effect when Complainant signed the signature card. The defendant then supplemented its renewed motion with the relevant depository agreement and included a declaration from an employee attesting to the accuracy of the depository agreement. Complainant filed a response in opposition to the supplement in which he argued he had no knowledge of a contractual agreement, the defendant had fraudulently falsified documents, and the effective date on an exhibit had been purposefully removed to defraud and deceive the court. On February 3, 2022, Complainant filed a motion for preliminary injunctive relief, seeking an order directing the defendant to "halt and remove all derogatory credit history from all credit bureaus."

On the same day, the Subject Judge entered an order granting the defendant's renewed motion to compel arbitration,

denying Complainant's motion for preliminary injunctive relief, denying the defendant's motion to dismiss without prejudice, staying the case, and directing the parties to file status reports. The Subject Judge found in part that a valid written agreement to arbitrate existed, and that an arbitrable issue existed because Complainant alleged the defendant violated two statutes when it engaged in specific activities related to Complainant's "bank account." With respect to Complainant's motion for injunctive relief, the Subject Judge found Complainant had failed to show a likelihood of success on the merits of his case.

After that, Complainant filed a motion for leave to amend his complaint and to compel discovery, and the Subject Judge denied the motion without prejudice in the light of the previous order. Complainant then filed a notice of appeal and a motion for leave to proceed *in forma pauperis* (IFP) on appeal, and the Subject Judge denied the IFP motion, stating the court could not find that there were any non-frivolous issues to be raised on appeal and certifying that the appeal was not taken in good faith.

The record also shows that in June 2021 Complainant and another individual filed a "Class Action" complaint against a city and other defendants raising various claims, and the complaint was signed only by Complainant. Complainant also filed an emergency motion for a temporary restraining order (TRO) and a motion for preliminary and permanent injunctive relief.

Also in June 2021, the Subject Judge entered an order stating that Complainant (1) brought the case on behalf of another

individual; (2) was proceeding *pro se* and could not represent others; and (3) was limited to proceeding on his own behalf because only he signed the complaint. The Subject Judge ordered the complaint stricken as an impermissible “shotgun pleading,” noting Complainant realleged and reincorporated all of the facts in each count and lumped all the defendants together. The Subject Judge also denied the motions for a TRO and for injunctive relief, stating, among other things, that Complainant provided no reason why he waited to seek emergency relief despite that the parties’ dispute dated back at least two years and provided no reason why the defendants should not be allowed an opportunity to respond to the motions.

On July 6, 2021, the plaintiffs filed an emergency motion for injunctive relief and an amended complaint, which were signed by both plaintiffs. On the same day, the Subject Judge entered an order striking the amended complaint as an impermissible shotgun pleading and dismissing the case, stating the plaintiffs made no effort to remedy the deficiencies in the initial complaint. The plaintiffs then filed a motion for relief from the order, which the Subject Judge construed as a motion for reconsideration and denied.

Complaint

Complainant generally contends that the Subject Judge failed to review the pleadings and to address his arguments, and he complains that no hearing was held in his cases. Complainant takes issue with the Subject Judge’s statement that Complainant provided no reason for waiting to seek relief in the second case despite

that the dispute dated back at least two years, and he alleges the Subject Judge either did not read his request for relief or “did not understand imminent and immediate danger was apparent due to continued harassment” Complainant states he contended the harassment was ongoing and getting worse, more intense, and more serious. Complainant then states, “He is either extremely incompetent, does not know the law, or he has no time and is not protecting others under his view of the law and this is complete miscarriage of justice because I am in [sic] Pro Se.”

Next, Complainant asserts the Subject Judge gave “a boiler plate decision” denying his request for injunctive relief and requiring him to submit to arbitration because the Subject Judge “has no time for this case and has not answered many briefs that were filed,” stating the Subject Judge “answered some of these briefs” 13 months later after both parties complained. Complainant states, “this may also be because of his personal prejudice toward me and maybe also be vindictiveness.”

Complainant then alleges the Subject Judge (1) did not read anything Complainant submitted; (2) ignored the law and “defied the constitution and state and Federal laws”; (3) “did not care” or felt he did not have the time to care; (4) was prejudiced against pro se parties and racially prejudiced; (5) “is not competent to be a judge”; (6) is “overloaded with cases” and “overwhelmed”; (7) engaged in a dereliction of duty; (8) violated his oath of office; (9) prevented Complainant from filing amended complaints; (10) refused to force the defendants to respond to his complaints; (11) denied

every request for relief he made; (12) destroyed his discovery; (13) ignored fraud and misconduct committed by the opposing party and counsel; and (11) “decided to destroy [Complainant’s] life.”

Complainant asserts that in July 2021 the Subject Judge met with opposing counsel in one of the cases without Complainant’s knowledge, and he contends that the timing of a certain order shows that the Subject Judge was in communication with the defendants. Complainant also asserts the Subject Judge lied by stating his claims in the first case related to his bank account when they related to loans, and that he lied so that he could cause the case to be submitted to arbitration. Finally, Complainant takes issue with the order dismissing a previous Complaint of Judicial Misconduct or Disability he filed against the Subject Judge. He provided a flash drive with his complaint, which he states contains various case-related materials.

Supplement

In Complainant’s supplemental statement, he alleges the Subject Judge showed a consistent pattern of “prejudice and violating his oath of office.” Complainant then takes issue with the Subject Judge’s order denying his motion to appeal IFP, contending the Subject Judge determined the appeal was frivolous without reviewing filings, without holding a hearing, and without responding to “countless documents.”

Previous Complaint

In November 2021 Complainant filed a Complaint of Judicial Misconduct or Disability against the Subject Judge, No. _____. In that complaint, Complainant alleged in part that the Subject Judge (1) dismissed the second above-described case without reviewing the filings; (2) erroneously stated Complainant represented another individual; and (3) inappropriately stated that he waited to file the case. In January 2022 that complaint was dismissed as merits-related and based on allegations lacking sufficient evidence. No petition for review was filed, and the complaint matter is closed.

Discussion

Judicial-Conduct Rule 4(b)(1) provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The Commentary on Rule 4 explains the rationale for this rule as follows:

Rule 4(b)(1) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the

correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

Furthermore, Judicial-Conduct Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” states that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

In addition, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those repeated allegations and address only allegations that have not previously been considered. *See* Judicial-Conduct Rule 11(c)(2).

To the extent Complainant repeats the allegations made in Complaint No. _____, those allegations have been previously considered. To the extent Complainant’s new allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the above-described cases, those allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, was biased or prejudiced, violated his oath of office, was incompetent,

engaged in inappropriate *ex parte* communications, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge